

**SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) SYSTEM****PROCESS CONTROL SYSTEMS****Contract No. SS8180-3/13**

THIS PROCUREMENT AGREEMENT made and entered into as of this \_\_\_\_\_ day of February, 2007 by and between Bristol, Inc. , a corporation organized and existing under the laws of the State of Delaware, having its principal office at 1100 Buckingham Street, Watertown, Connecticut 06795 (hereinafter referred to as "the Contractor" or "Bristol"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County" or "Customer"). (Both parties collectively referred to hereinafter as the "Parties").

**WITNESSETH:**

WHEREAS the County desires to procure such Hardware, Parts, Software, Applications Programming Services, Support Services, Workstations, Repairs, and Training for the continued Expansion and Maintenance of the Miami-Dade County Supervisory Control and Data Acquisition (SCADA) System, in accordance with the terms and conditions set forth in this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal No. WTN-P05632, dated March 3, 2006, to provide the Miami-Dade Water and Sewer Department with the necessary hardware, software and applications and support services to maintain and expand the current and future requirements of the Miami-Dade County Supervisory Control and Data Acquisition SCADA System, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, it is in the best interest of the County to proceed with the issuance of an agreement providing the Miami-Dade Water and Sewer Department with the necessary hardware, software and applications and support services to maintain and expand the current and future requirements of the Miami-Dade County Supervisory Control and Data Acquisition System (SCADA);

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## GENERAL TERMS AND CONDITIONS

### ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) "Agreement" means collectively this Agreement, including Exhibit "A" and all mutually agreed upon written amendments to this Agreement.
- b) "Contract" means collectively this Agreement, and the Purchase Order issued by the County to the Contractor under this Agreement.
- c) "SCADA System" means Supervisory Control and Data Acquisition System.
- d) "Effective Date" means the date upon which the last party to sign this Agreement has executed it.
- e) "WASD" means the Miami-Dade Water and Sewer Department.
- f) "System" means the software, equipment, services, supplies, and incidental materials combined together into a system.
- g) "Purchase Order" means a document issued by the County to the Contractor incorporating by reference this Agreement, which defines, among other things, the scope of work, price, and schedule.
- h) "Work" means all Materials, Software, Systems and/or Services to be furnished and completed by the Contractor in accordance with the provisions of the Purchase Order. .
- i) The words "Materials" and "Goods" mean all material, equipment, hardware, components, parts, and documentation to be furnished by the Contractor to complete the Work set forth in the Purchase Order, excluding Software.
- j) "Services" means all of the labor, supervision, administration, applications services and/or other services required to complete the Work set forth in the Purchase Order.
- k) The words "spare", "part" and "spare part" to mean a component of any System or equipment, purchased as a single item and which may be used as a replacement.
- l) The word "Days" to mean Calendar Days.
- m) The words "Article" and "Section" to mean each rule as numbered in this Agreement.
- n) "Change Order" means a document issued by the County to the Contractor to change the Purchase Order, resulting in additions or deletions or modifications to the scope and/or value of the Work as mutually agreed to and approved by the County and the Contractor.
- o) "Contract Manager" means the duly authorized representative of the County designated to manage the Contract on the County's behalf.

### ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Contractor's Proposal, 3) and any associated addenda and attachments thereof.

### **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Agreement, nor affect the meaning thereof.

### **ARTICLE 4. SCOPE OF THE AGREEMENT**

- a) During the term of this Agreement, the County may from time to time issue to the Contractor, an appropriate written Purchase Order for the supply of Materials, Software and/or Services ("Work"), which shall be controlled and governed by the terms and conditions in this Agreement. Upon acceptance of any Purchase Order by Contractor and without the necessity of any reference therein, this Agreement shall become an integral part of the Purchase Order. Agreements or stipulations in any such Purchase Order not in conformity with the terms and conditions hereof shall be null and void. No waiver of any of the terms, provisions or conditions hereof shall be effective unless said waiver shall be in writing and signed by an authorized officer of the County and the Contractor.
- b) The Contractor shall provide the Work as set forth in the Scope of Work as defined in the Purchase Order. The Contractor shall render full and prompt cooperation with the County in all aspects of the Work performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work under this Agreement. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required that are necessary for the completion of the Work. All Work shall be accomplished at the direction of and to the satisfaction of the County's Contract Manager, subject to this Agreement.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Work. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any

and all mutually agreed to changes in providing the Work hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. SCOPE OF WORK**

During the term of this Agreement, the County may from time to time purchase from Bristol, and Bristol shall provide the County, directly or through its agents or subcontractors, for Miami-Dade Water and Sewer Department water and wastewater treatment and pumping facilities, hardware, parts, software (Open Enterprise System), applications programming services, support services, workstations, repairs, and/or training for the continued expansion and maintenance of the SCADA System. The Scope of Work shall be specifically defined in the Purchase Order.

#### **ARTICLE 6. AGREEMENT TERM**

The Agreement shall become effective on the date set forth above, and shall be for the duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for an additional period of three (3) additional one-year periods on a year-to-year basis. The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the initial term, and will notify the Contractor in writing of the extension. This Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

#### **ARTICLE 7. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

- a) Miami Dade Water and Sewer Department (WASD)  
3071 S.W. 38th Avenue, Room 107-7  
Miami, FL 33146

**Attention: Greg Hicks, Special Projects Administrator**

Phone: (786) 552-8049

Fax: (786) 552-8549

E-Mail: [greg@miamidade.gov](mailto:greg@miamidade.gov)

and,

- b) Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

**Attention: Leida Altman Carrillo, Sr. Procurement Contracting Agent**

Phone: 305-375-1084

Fax: 305-375-5688

E-Mail: [lcarril@miamidade.gov](mailto:lcarril@miamidade.gov)

**(2) To the Contractor**

Bristol, Inc.  
1100 Buckingham Street  
Watertown, CT 06795

**Attention: Roger Labrecque**

Phone: 800-945-2271

Fax: 860-945-2213

E-Mail: [roger.labrecque@emersonprocess.com](mailto:roger.labrecque@emersonprocess.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 8. PAYMENT FOR WORK/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the type and nature of the Work, which the County may from time to time purchase from the Contractor to be performed under the terms and conditions of this Agreement. During the initial year of this Agreement, the total aggregate sum of all purchases for the Work performed under this Agreement shall not exceed the total amount of Three Million, Seven Hundred Fifty Thousand Dollars (\$3,750,000) for the initial year. All Work undertaken by the Contractor shall be presented to the County for approval prior to the start date. All unauthorized work conducted under this Contract, not approved in writing by the County shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, and per diem. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

**ARTICLE 9. PRICING**

Offers shall be submitted on the basis of a discount (as set forth in Article 10, "Discounts") from Bristol's then-current published price lists, as set forth in Bristol's then-current price book incorporated herein referred to as "Exhibit A". Such published price lists shall be Bristol's standard list price policy, and shall be printed, properly identified, and dated as to issuance. Offers shall be in the form of a quotation and shall be firm for 30 days from quotation date.

Bristol's published price lists are subject to change or cancellation without notice. Revised price lists will be accepted by the County only in the event such revisions are included in Bristol's standard published price lists, as evidenced by the issuance of the revised price lists to the County. All such revisions shall be sent to the County's Department of Procurement Management for record, under Bristol's cover letter, identifying the County's Contract number.

The revised published price lists may be used by Bristol as the basis, along with the applicable discounts per Article 10 herein, to quote adjustments for additions to the Work. However, all offers are to be firm after award, except as otherwise provided pursuant to the provisions set forth in this Agreement.

#### **ARTICLE 10. DISCOUNTS**

The following Discounts shall be coterminous with the term of this Agreement, including any and all options to renew, and shall supersede any other discounts that may be mentioned in any part of this Agreement and attached exhibit.

- a) Material manufactured by Bristol and Bristol's Licensed Software will be charged at Bristol's then-current published list prices per Exhibit "A" less 23%.
- b) Material and Software listed in Exhibit "A" but manufactured by another manufacturer will be charged at Bristol's then current published list prices with no discount.
- c) Services will be charged at Bristol's then-current published list prices per Exhibit "A" less 15%
- d) Standard Factory Training courses will be charged at Bristol's then-current published list prices per Exhibit "A" less 10%.
- e) The discount rates noted above will apply to the then-current published price lists for the design and supply of custom built UL enclosures.

#### **ARTICLE 11. PRICES FOR THIRD-PARTY MATERIAL, SOFTWARE AND SERVICES**

For the term of this Agreement, Bristol's prices to the County for third-party material, software and Services shall be determined as follows:

- a) Materials, equipment, software and/or Services provided by a third party shall be charged at Bristol's cost plus 27%
- b) Surety Bonds (if required) shall be charged at Bristol's cost plus 27%.

#### **ARTICLE 12. DELIVERY AND TITLE TO PRODUCTS**

After receipt by Bristol of an acceptable Purchase Order from the County,, on the mutually agreed to date set forth in such Order, Bristol shall deliver the Products purchased in such Purchase Order to the site designated in such Purchase Order ("Customer Site"). Bristol will obtain approval of shipping method from County prior to any shipments. County shall be responsible for shipping charges only if shipping method was authorized in advance. The price shown on the Purchase Order and all transportation provided hereunder are F.C.A. shipping point ("F.C.A. Site"). Title and risk of loss to the Products shall pass to Customer immediately upon the Products leaving the F.C.A. Site. If Bristol pre-pays any of the foregoing Shipping Costs, Bristol shall invoice the County for all such Shipping Costs incurred by Bristol or its agents, and County shall promptly pay such invoice pursuant to the provisions set forth in Article13 herein. County agrees to indemnify, defend and hold Bristol harmless for any damages, caused by the carrier or otherwise, to the Products, which occur after the Products leave the F.C.A. Site, including without limitation during any period prior to Customer's receipt of title to the System herein; provided that such damages are not the direct result of gross negligence or intentional misconduct of Bristol or its employees. If Bristol secures insurance for

any Products during shipment of the Products to any site designated by County, including without limitation the Customer Site, County agrees to pay all charges for any such insurance.

#### **ARTICLE 13. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, the Contractor may bill the County periodically, but not more than once per month (per Purchase Order) for the unbilled value of the Work completed by the Contractor. Such Work may be billed in accordance with payment milestones and/or a schedule of values to be mutually agreed to and set forth in the applicable Purchase Order. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County shall be thirty (30) days from receipt of a proper invoice.

All payments due from the County, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County Water and Sewer Department  
Attention: Accounts Payable  
3071 S.W. 38th Avenue, Room 107-7  
Miami, FL 33146

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

#### **ARTICLE 14. INDEMNIFICATION AND INSURANCE**

To the extent that Contractor is negligent and at fault, the Contractor shall defend, indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, for death, personal injury, or property damage, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature (hereinafter "Losses") arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Contractor shall not be liable for any Losses to the extent attributable to the County or any third party. The foregoing shall not apply unless Contractor receives adequate notice, information and assistance from the County and has an opportunity to defend itself. In no case shall Contractor's liability hereunder exceed the amount set forth in Article

41 entitled "Limitation of Remedy and Liability." The County shall likewise indemnify, defend and hold harmless Contractor from and against any and all Losses arising out of any negligent act or omission of the County, its officers, employees, agents, instrumentalities, contractors or assigns up to the limits set for the in Florida's statute 768.28. The county does not waive any immunity beyond the waiver in 768.28.

Deleted: imunity

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Technical Services Division, 111 N.W. 1<sup>st</sup> Street, Suite 1300, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage**, subject to (a) the terms and limits of liability which are set out in this Agreement (b) such inclusion as additional insured only applying to the products and/or services which are to be supplied by Contractor under the Purchase Order, and (c) such inclusion as additional insured only applying to the extent of Contractor's negligence. Nothing in the Agreement shall be deemed to alter any generally accepted insurance principles relating to whether an applicable insurance policy of either the County or Contractor would apply to a loss on a primary or an excess basis.

**The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.



Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY  
111 NW 1<sup>st</sup> STREET  
SUITE 2340  
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of any Contract under this Agreement is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the term of this Agreement, including any and all extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the term of this Agreement, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

#### **ARTICLE 15. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Work described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Work and to full and prompt cooperation by the Contractor in all aspects of the Work. The Contractor, if so directed upon reasonable request from the County, shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Work hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing Work hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Work a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity and character as necessary to perform the Work described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Work.
- f) The Contractor shall comply with all provisions of all local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 16. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 17. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all Work and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the Work performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 18. DISPUTE RESOLUTION**

- a) The Contractor hereby acknowledges that the County's Contract Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Work; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Work; and claims for damages, compensation and losses.
- b) The Contractor and the County's Contract Manager shall attempt in good faith to resolve every difference, concerning this Agreement, promptly by negotiation. In the event that the Contractor and the Contract Manager are unable to resolve their difference within 30 days or any mutually agreed to extension thereof (negotiation period), then either Party may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- c) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who shall not be the Contract Manager or anyone associated with the contract or resultant purchase order, acting personally and as a neutral party, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of this Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on the Parties. Any such dispute shall be submitted in writing, if at all, to the County Manager within 15 days after the end of the negotiation period defined above, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made.
- d) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of the contract or resultant purchase order. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate and with reasonable promptness, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

#### **ARTICLE 19. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

**ARTICLE 20. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Work. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

**ARTICLE 21. AUDITS**

The Contractor agrees that a mutually agreed upon independent auditor shall, until the expiration of three (3) years of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, and records relating to the amounts invoiced to the County by the Contractor. Such records shall conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement. Excluded from audits will be employee salary and personal information, the calculation of standard rates, overhead or profit factors, and Contractor's proprietary information. The audit(s) shall take place at the Contractor's place of business during normal working hours.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for such audits.

**ARTICLE 22. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

**ARTICLE 23. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 24. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were

employees of the Contractor. The portion of the Work performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

- b) The Contractor, before making any subcontract for any portion of the Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Work to be performed. Such Work performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Work in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed work of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information.

#### **ARTICLE 25. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

#### **ARTICLE 26. TERMINATION AND SUSPENSION OF WORK FOR CONVENIENCE**

- a) The County may at any time, in its sole discretion, without cause, terminate or suspend this Agreement or the Work in whole or in part, by 30 calendar days advance written notice to the Contractor. In the event of termination for convenience the Contractor shall, upon receipt of such notice, unless otherwise mutually agreed to:
  - i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables

- v. take no action which will increase the amounts payable by the County under this Agreement; and
- b) In the event that the County exercises its right to terminate this Agreement or the Work in whole or in part pursuant to this Article, the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. unpaid balance of the value of the Work completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
  - ii. noncancelable Deliverables and other reasonable and unavoidable damages, costs and expenses which the Contractor incurs or becomes obligated for prior to the Effective Termination Date and/or as a result of such termination.
- c.) In the event that the County exercises its right to suspend the Work in whole or in part pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for:
  - i. all reasonable and unavoidable damages, costs and expenses which the Contractor has incurred or become obligated for as a result of such suspension.
- d) If the County suspends the Work, and such suspension extends for more than 90 days, unless otherwise mutually agreed to, then such suspension will convert to termination for convenience and the Contractor shall be compensated in accordance with this Article for such termination for convenience.
- e) All compensation pursuant to this Article are subject to audit.

**ARTICLE 27. EVENT OF DEFAULT**

- a) An Event of Default shall mean a material breach of this Agreement by the Contractor.
- b) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

**ARTICLE 28. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs, in the determination of the County, before the County may terminate this Agreement or any portion of the Work, the County shall notify the Contractor in writing ("Default Notice"), specifying the basis for such default, and shall allow the Contractor thirty (30) days following the Contractor's receipt of such Default Notice to commence its efforts to correct such default or to provide a mutually acceptable resolution. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Work upon the Termination Date.

**ARTICLE 29. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs and the County terminates this Agreement or any portion of the Work, the County shall not be liable to Contractor for payment of any amount other than for (a) the value of any partial shipment of goods received and not returned to Contractor by the County and (b) any unpaid portion of the Work already properly performed by the Contractor, and the Contractor shall be liable to the County for all reasonable damages resulting from the default which gave rise to the termination.

- a) the difference between the County's cost associated with procuring the Work hereunder and the amount actually expended by the County for reprocurement of the Work, including procurement and administrative costs; and,
- b) such other reasonable direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

#### **ARTICLE 30. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor warrants that all Deliverables, manufactured, designed or developed by the Contractor, furnished hereunder, including but not limited to: Systems, SCADA Systems, equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any United States patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) Subject to this Article 30, the Contractor shall be liable and responsible for any and all claims made against the County for infringement of United States patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any Deliverables, including but not limited to: Systems, SCADA Systems, equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of such Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability provided that the County: promptly notifies Contractor in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall, at its sole option, provide a commercially reasonable alternative, including, but not limited to, (i) modify or replace the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).



- d) The County agrees that the Contractor shall not be liable for infringement if infringement is based upon the use of the Deliverables in connection with goods or software not supplied by the Contractor, or in any manner for which the Deliverables were not designed or intended by the Contractor, or if the Deliverables were not manufactured, designed or developed by the Contractor, or if the Deliverables were modified by or for the County in a manner to cause them to become infringing.
- e) The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk, and shall be solely responsible for determining whether a prospective supplier or subcontractor of the Contractor is a party to any litigation involving United States patent or copyright infringement, service mark or trademark violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder, unless the Contractor is specifically directed by the County under the Purchase Order to provide such Deliverable. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

#### **ARTICLE 31. CONFIDENTIALITY**

- a) All materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Work performed under this Agreement, for which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Work performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall



accompany such materials.

### **ARTICLE 32. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of this Agreement, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"), except for any portion of the Computer Software for which Contractor holds rights of ownership and title. All third-party license agreements must also be honored by the Contractor and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the Contractor. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

### **ARTICLE 33. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Work under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Work under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) Goods, software, documents and other information provided by the Contractor to meet the requirements of this Agreement are considered standard offerings of the Contractor, and the Contractor shall retain all proprietary rights thereto. Any and all of the Contractor's and/or third party proprietary software and firmware furnished hereunder shall be furnished subject to the Contractor's and/or the third party's applicable terms and conditions for license (including, but not limited to, terms of warranty), which shall take precedence over any conflicting or inconsistent terms and conditions herein. The

Contractor and applicable third party owner shall retain all rights of ownership and title in and to all its respective software, firmware and other intellectual property, which the Contractor may utilize or provide hereunder, including all copyrights relating to such software, firmware and other intellectual property, and all copies of such software, firmware and other intellectual property. Except as otherwise provided herein, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a nonexclusive, perpetual, and irrevocable right and license to use all such software and firmware incorporated into the Work, and the associated specifications, technical data and documentation, only in conjunction with such Work, subject to the Contractor's and/or the third party's applicable terms and conditions for license.

#### **ARTICLE 34. BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

#### **ARTICLE 35. INSPECTOR GENERAL REVIEWS**

##### **Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

##### **Miami-Dade County Inspector General Review**



According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for any Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total Contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all Change Orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed Change Orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, Change Order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

#### **ARTICLE 36. ADDITIONAL EQUIPMENT, SOFTWARE, OR SERVICES**

During the Term of this Agreement, the County may order additional equipment, software, or Services provided they are available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement will govern the purchase and sale of the additional equipment, software, or Services.

#### **ARTICLE 37. PERMITS**

Any local permits and approvals as may be required to perform Work shall be obtained and paid for by the County.

#### **ARTICLE 38. WARRANTY FOR PRODUCTS**

Subject to the limitations contained in Article 41 herein, Bristol warrants that the Goods manufactured by Bristol provided hereunder will be free from defects in materials or workmanship under normal use and care. The foregoing warranties will apply until the expiration of the applicable warranty period. Goods manufactured by Bristol are warranted for twelve (12) months from the date of initial installation or eighteen (18) months from the date of shipment by Bristol, whichever period expires first. Consumables are warranted for a period of 90 days from the date of shipment. Products purchased by Bristol from a third party for resale to the County ("Resale Products") shall carry only the warranty extended by the original manufacturer. The County agrees that Bristol has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If the County discovers any warranty defects and notifies Bristol thereof in writing during the applicable warranty period, Bristol shall, at its option, repair or replace F.O.B. point of manufacture that portion of the Goods found by Bristol to be defective, or refund the purchase price of the defective portion of the Goods. All replacements or repairs necessitated by inadequate maintenance, unsuitable power sources, environmental conditions, lightning, accident, fire, misuse or abuse, improper installation, modification, use of unauthorized replacement parts, storage or handling, or any other cause not the fault of Bristol are not covered by this limited warranty, and shall be at the County's expense. Bristol shall not be obligated to pay any costs or charges incurred by the County or any other party except as may be agreed upon in writing in advance by Bristol. All costs of dismantling, reinstallation and freight and the time and expenses of Bristol's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by the County unless accepted in writing by Bristol. Goods repaired and parts replaced by Bristol during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Bristol and can be amended only in a writing signed by Bristol.

Notwithstanding any other provision herein, the terms of warranty for Licensed Software shall be as set forth in Bristol's applicable terms and conditions for license. If no terms of warranty are provided in the applicable software license, the following software limited warranty shall apply.

- Bristol warrants that it has full right and authority to license the Licensed Software as provided hereunder. Bristol warrants to the original licensee that the disk(s) on which the software is recorded is free from defects in materials and workmanship under normal use and service for a period of ninety days from date of delivery. The software and accompanying written materials (including instructions for use) are

provided "as is" without warranty of any kind. Further, Bristol does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the software or written materials in terms of correctness, accuracy, reliability, currentness, or otherwise. The entire risk as to the results and performance of the software is assumed by the Buyer. If the software or written materials are defective the Buyer, and not Bristol or Bristol employees, assume the entire cost of all necessary servicing, repair, or correction.

#### **ARTICLE 39. WARRANTY FOR SERVICES**

Bristol warrants that all Services provided to County hereunder will be performed in a workmanlike manner.

#### **ARTICLE 40. EXCLUSIVITY OF WARRANTIES AND REMEDIES**

THE WARRANTIES AND REMEDIES SET FORTH IN THIS AGREEMENT FOR GOODS, SOFTWARE AND SERVICES ARE LIMITED WARRANTIES AND ARE EXCLUSIVE. BRISTOL EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. BRISTOL DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. BRISTOL'S LIMITED WARRANTIES ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF BRISTOL FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT. EXCEPT FOR THE LIMITED WARRANTIES, THE ENTIRE RISK OF THE PRODUCTS AND SERVICES IS WITH CUSTOMER.

#### **ARTICLE 41. LIMITATION OF REMEDY AND LIABILITY**

The Contractor shall not be liable for damages caused by delay in performance. The remedies of the County set forth in this Agreement are exclusive. In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall the Contractor's liability to the County and/or its customers exceed an aggregate amount equal to the total price of the Purchase Order giving rise to the claim or cause of action. The County agrees that in no event shall the Contractor's liability to the County and/or its customers extend to include incidental, consequential or punitive damages. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, revenue or use and costs incurred including without limitation for capital, fuel and power, and claims of the County's customers.

#### **ARTICLE 42. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and, as made known to the Contractor by the County in writing, the County orders, statutes, ordinances, rules and regulations which may pertain to the Work performed under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- i) Contractor is a supplier of "commercial items and commercial components" within the meaning of the Office of Federal Procurement Policy Act of 1995 (52.244-6 Subcontracts for Commercial Items and Commercial Components), and as such the parties agree that there is no inclusion of any government provision or clause in any contract entered into under the terms of this Agreement, except the following provisions to the extent they are applicable: 52.222-26, Equal Opportunity (E.O. 11246); 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212[a]); and 52.222-36 Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### **ARTICLE 43. NONDISCRIMINATION**

During the performance of Work under this Agreement, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Agreement with the County, the Contractor attests that it is not in violation

of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Agreement void. This Agreement shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Agreement, even if the Contractor was not in violation at the time it submitted its affidavit.

#### **ARTICLE 44. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Contract Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Contract Manager in regard to remedying the situation.



**ARTICLE 45. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Work to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 46. FORCE MAJEURE**

Bristol shall not be liable for, nor be deemed to be in default by reason of, any delay or failure in the performance of its tasks (or any part thereof) under this Agreement, when such delay or failure is caused, in whole or in part, by circumstances constituting force majeure, including without limitation, an act of god, war, terrorism, riot, strike, fire, flood or failure or delay on the part of subcontractors, suppliers, carriers, or the County, change in governmental regulations, or any other cause or circumstance, direct or indirect, beyond Bristol's reasonable control. Such failure or delay, to the extent it retards Bristol's performance of the Work or any other undertaking under this Agreement, will extend the time for performing the same for as many days beyond the applicable performance date as is required to correct the effects of such force majeure event.

**ARTICLE 47. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

Notwithstanding the foregoing, to the extent that the Contractor has relied upon any specifications, information, representation of operating conditions or other data, supplied in writing by the County



to the Contractor, in the selection or design of the Goods, software and/or provision of the Services, and the preparation of quotations, and in the event that actual operating conditions or other conditions differ from those represented by the County and relied upon by the Contractor, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

#### **ARTICLE 48. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

#### **ARTICLE 49. GOVERNING LAW**

This Agreement, including appendices, and all matters relating to this Agreement (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Chapter 119, Florida Statutes, known as the "Public Record Law," and Chapter 812, Florida Statutes, titled "Theft, Robbery, And Related Crimes," including Chapter 812.081 titled "Trade secrets; Theft, Embezzlement; Unlawful Copying; Definitions; Penalty."

#### **ARTICLE 50. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

#### **ARTICLE 51. COUNTY USER ACCESS PROGRAM (UAP)**

##### **a) User Access Fee**

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Agreement shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

##### **b) Joint Purchase**

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

##### **c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Agreement.

#### **ARTICLE 52. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor

and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 53. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties, and supersedes any and all prior agreements, proposals, arrangements, understandings, negotiations, and all other communications, oral or written, not expressly incorporated.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Bristol, Inc

Miami-Dade County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Corporate Secretary

Clerk of the Board

Corporate Seal

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney

# **EXHIBIT A**

## **PUBLISHED LIST PRICES**

# **FORMAL AFFIDAVITS**